

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

FILED
IN CLERKS OFFICE

2022 JUN 22 AM 10:05

UNITED STATES OF AMERICA
PLAINTIFF

V.

NOSAYAMEN IYALEKHUE
DEFENDANT

CRIMINAL ACTION
No.1:20-CR-10208-RWZ-1

MOTION PURSUANT TO TITLE 18 U.S.C. § 3582 et seq.

District Courts around the country have recognized that defendants are entitled to relief under the first step act for "extraordinary and compelling" reasons.

- In United States v. Young No. 02000-CR-00002-1 2020 WL 1047815 at 6 (M.D. Tenn. March 4, 2020) the court states that;

"Majority of the District Courts that have considered the issues have likewise held, based on the first step act, that they have the authority to reduce a prisoner's sentence upon the court's independent findings of an extraordinary and compelling reason.

In this motion Petitioner will prove to this Honorable Court that extraordinary and compelling reasons exist for the court to grant Petitioner relief.

On March 4, 2021 this Honorable Court issued a Judgment and Commitment order in which the court put Petitioner in the custody of the United States Bureau of Prisons.

Under a congressional enabling statute, Congress outlines the duties and functions of the B.O.P. under the direction of the Attorney General.

The same provides in relevant parts... (2) provides suitable quarters, and provides for a safekeeping, care, and subsistence of all persons... convicted of offenses against the United States.

However during the past 1 1/2 years of the Covid 19 pandemic, the people who are in charge to provide me the safekeeping, care and subsistence, have breached their duty of care and negligently exposed me to an unreasonable risk to death.

Negligent means;

- 1.) Marked by or given to neglect especially habitually or culpably; not taking prudent care;
- 2.) Marked by a carelessly easy manner.

In the case of the B.O.P.'s failure to establish a bubble to eliminate the risk possessed by B.O.P. officials, by coming in and out of the facilities, creates and put Petitioner at risk of getting infected with Covid or even dying, clearly establishes under the direct duty theory a cause of action for negligent infliction of emotional distress.

In this case it is clear that the B.O.P. takes the careless easy manner when they decided to control the situation by using masks and temperature scanning.

However under the prudent care and under the direct duty imposed by the law, the bubble was the remedy because it will eliminate any type of risk. (see NBA Bubble Results)

Its clear that for the past 1 1.2 years Petitioner has been subject by negligence to a serious stressful time.

- 1.) Petitioner has been subject to lockdowns without being able to call his family to find out if everything was okay.
- 2.) The guards, after going home, come back to the facilities pass the food out and sometimes I have been scared to touch the same.
- 3.) Watching the news and finding out how many people died, people healthy, people without any type of health issues was alarming to me.

4.) touching the phone, the computers, and using the same showers that everyone else uses.

Wherefore, based on the harsh conditions that Petitioner has been subject to it Petitioner very respectfully requests to be re-sentenced to time served.

I declare under the penalties of perjury 28 USC § 1746 that the facts presented on this compassionate release petition are true to the best of my knowledge and belief.

Executed on 5/23, 2022.

/s/ 

Nosayamen Iyalekhue